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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

December 5, 1994



The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M. Street, N.W.  
Washington, D.C. 20554

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Dear Chairman Hundt:

Today, Fox Television is filing a response to the NBC rulemaking petition regarding foreign ownership. I am writing separately to emphasize my personal anguish regarding this matter and to emphasize the urgent need to resolve issues regarding Fox's ownership.

NBC has fundamentally misstated the law. There is no flat prohibition on foreign ownership in excess of 25 percent for corporations that control broadcast companies. Rather, Congress gave the FCC discretion to limit foreign ownership to 25 percent if, and only if, it finds, on a case-by-case basis, that the public interest would be served by such a restriction. No such finding has been made regarding me and my company and, in fact, the FCC twice found that Fox was fully qualified to become an FCC licensee.

News Corporation is a company with deep roots in the United States. Although News Corporation has its origins in Australia, at present in excess of 60 percent of the company's assets, revenues and operating income are attributable to its U.S. businesses. Further, I, as a U.S. citizen, exercise *de facto* control of News Corporation and all its businesses.

Contrary to NBC's misleading arguments and its recent presentations throughout Washington, the crucial element of American control is not present in any other large international media company of which I am aware, including companies such as Sony and Matsushita. *In fact, because I am an American and because I control News Corporation, our company is deemed to be an American-controlled foreign company under Australian law, and therefore, neither I nor News Corporation is eligible to hold more than a 15 percent interest in broadcast licenses in Australia.*

Our 1985 FCC application for Fox's initial station acquisitions fully disclosed the structure of our company including the fact that I, along with Barry Diller, would own of record and vote 76 percent of the capital stock of Twentieth Holdings Corporation, parent of our licensee company.

In addition, an exhibit unambiguously entitled "Source of Funds" disclosed that all of the funds for our acquisition would be supplied by News Corporation. The FCC issued two written decisions approving our application, and our acquisition was executed in compliance with the terms of our application.

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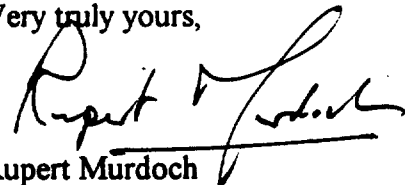
Prior to filing any license renewal application, we sought and obtained in 1988 a formal written opinion from the prominent Washington D.C. law firm which advised us on the structure of the initial station acquisitions in order to confirm that we were in full compliance with the alien ownership provisions of the Communications Act. There have been no changes in the ownership structure or control of Twentieth Holdings Corporation or News Corporation that would affect the continuing legal validity of this opinion. Today I personally own 76 percent of the capital stock of Twentieth Holdings Corporation and effectively designate the manner in which 100 percent of its stock is voted by virtue of my *de facto* control of News Corporation.

The Commission has actively encouraged the creation of a fourth broadcast network, and my colleagues and I have worked diligently to fulfill that public policy goal. We have succeeded to the point that we now find ourselves in the middle of fierce marketplace competition with the other networks, including competition for strong affiliates. Continued delay and uncertainty will disserve the public interest by thwarting robust competition. Already we have lost one station in Philadelphia at a cost of tens of millions of dollars. Other pending station transactions will be imperiled if this matter is not shortly brought to a conclusion.

This is, of course, exactly the purpose of the NBC petition. Its parent company, General Electric, which normally and loudly espouses the benefits of open competition, has been negotiating for some time to sell part or all of NBC to almost any buyer. This present strategy is a blatant attempt to preserve the status quo and thereby the value of an established oligopoly.

We have the greatest empathy for the demands being placed on the FCC to deal with the many difficult and challenging issues presently confronting the agency. However, the issue of our ownership structure has been pending for more than a year, and we urgently request a final resolution as soon as possible. I appreciate your consideration of my thoughts and apologize to the Commission and its staff for the fact that our competitive efforts in the marketplace continue to add to the agency's difficult workload.

Very truly yours,



Rupert Murdoch  
Chairman & CEO  
Fox Inc.

DEC - 5 1994

## EXECUTIVE SUMMARY

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

- In the guise of a request that the FCC apply its "rules" to all broadcasters equally, NBC's "petition" is a self-serving and cynical attempt to stop the increasing inroads being made by Fox in its competition with NBC and the other established networks. Although the FCC's examination of Fox's ownership structure has been pending for more than a year, NBC filed its "petition" only after Fox acquired NFL broadcast rights and began to make strategic investments that have cost NBC several affiliates and significantly increased NBC's cost of doing business. NBC isn't concerned about the appropriate application of FCC rules, but about the accelerating collapse of the old-boys' club that has dominated network broadcasting since its inception. It is not surprising that NBC would try to involve the FCC in its anticompetitive strategy, given the history of criminal convictions and anticompetitive behavior by its corporate parent, General Electric.
- NBC misstates and misinterprets the law. The provisions regarding foreign ownership of broadcast licensee holding companies are *not* embodied in the FCC's rules, but in Section 310(b)(4) of the Communications Act. The Act does *not* impose an absolute limit on foreign investment in broadcast licensee holding companies. Rather, it authorizes the FCC to restrict investment in excess of 25 percent on a case-by-case basis -- if, and only if -- the FCC finds that permitting it would be contrary to the public interest. The Act by its terms does *not* restrict the amount of foreign equity, but authorizes the FCC to consider foreign ownership only of "capital stock," as it did in approving Fox's structure and granting its 1985 Application for assignment of the Metromedia television stations. Consistent with Congressional intent, the Commission has never scrutinized paid-in equity when the extent of foreign stock ownership can be readily determined.
- Fox is *not* "more than 99%" foreign owned. Both Fox and its immediate corporate parent, Twentieth Holdings Corp., are U.S. corporations. As the FCC is aware, 76 percent of THC's capital stock is owned and voted personally by K. Rupert Murdoch, a U.S. citizen. Furthermore, Mr. Murdoch personally exercises *de facto* control over News Corporation, which indirectly owns the remaining 24 percent of Fox's capital stock. Although News Corporation has its origins in Australia, at present in excess of 60 percent of its assets, revenues and operating income are attributable to its U.S. businesses. Indeed, under Australian law News Corporation is deemed a foreign, U.S.-controlled company, and both it and Mr. Murdoch are prohibited from owning more than a 15-percent interest in broadcast licensees in Australia.
- Fox is *not* in violation of the law. The fact that News Corporation would be the source of funds for Fox's acquisition of the Metromedia television stations, as well as the Fox/THC capital stock structure and allocation of economic interests, were disclosed in Fox's 1985 FCC applications, which the FCC concluded were in the public interest. Prior to filing any renewal application, Fox received an opinion letter from the prominent Washington, D.C. law firm that had assisted it in connection with those applications confirming that Fox's structure complied with the Act. There have been no changes in either the ownership structure or control of Fox or News Corp. that would affect the continuing validity of that opinion or the FCC's grant of Fox's 1985 Application.

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December 5, 1994

## *By Hand Delivery*

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W. - Room 814  
Washington, D.C. 20554

Dear Chairman Hundt:

We write on behalf of Fox Television Stations Inc. ("Fox") to express Fox's profound concern regarding the so-called "Petition for Rulemaking" filed last week by National Broadcasting Company, Inc. ("NBC"), and to correct NBC's numerous misstatements of fact and law.

### INTRODUCTION

In the guise of a rational request that the Commission apply its "rules" to all broadcasters equally, NBC's "petition" simply seeks to stall Commission action on all Fox applications. And although its "petition" is cloaked in the mantle of the public interest -- NBC would have the Commission believe that no less than the future of "our national culture" is at stake (Petition at 2) -- NBC's real purpose is self-serving and cynical: to use the Commission to kill Fox as a competitor. To that end, NBC misstates the pertinent provisions of the Communications Act and grossly mischaracterizes the facts regarding Fox.

As the Commission is well aware, since last Spring NBC has responded to increasing competition from Fox by unleashing a blizzard of media attacks and harassing pleadings at the FCC against Fox and related entities. See Attachment A. In an effort to disrupt Fox's business plan, NBC tried to block even the ministerial act of acceptance for filing of an assignment application for WLUK-TV, Green Bay, Wisconsin, filed by SF Broadcasting of Green Bay, Inc., in which Fox has a 25-percent indirect, non-attributable, non-voting equity interest. NBC has threatened to oppose the WLUK-TV application and others that have been filed by related entities to acquire stations in Mobile, New Orleans and Honolulu.

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(Previously, NBC opposed an assignment application filed by SF Broadcasting's predecessor limited liability company; that application was subsequently withdrawn.) More recently, NBC has opposed Fox's applications for assignment of licenses of WTXF(TV) in Philadelphia and WFXT(TV) in Boston.

It appears NBC is not content with disrupting these individual transactions, and now is trying to ensnare Fox in a larger -- perhaps fatal -- administrative quagmire in order to bring Fox's continued growth and competition to a halt. Just in case the point is lost on the FCC, NBC's "petition" twice requests "that the Commission take no action in individual licensing proceedings" -- i.e., any Fox applications -- "that would foreclose or prejudice full consideration" of the issues it purports to raise. Petition at 7, 18.

But, as you (and NBC) know, the facts and issues as to which NBC now seeks "urgent" clarification (Petition at 1) have been before the Commission for more than a year. See "Supplement to Petition to Deny" Fox's application for assignment of licenses of WGBS(TV), Philadelphia, Pennsylvania, filed on November 19, 1993 by Metropolitan Council of NAACP Branches ("Metropolitan Council"). Indeed, although the WGBS(TV) application was dismissed on March 3, 1994, Fox asked the Commission to address Metropolitan Council's allegations, and thereby to confirm that Fox's ownership structure as approved by the FCC in 1985 continues to comply with the relevant statutory provisions regarding foreign ownership. Yet only after Fox acquired National Football League broadcast rights and invested in New World Communications Group Incorporated (costing NBC an affiliate) and -- most significantly -- after the vigorous new competition for network affiliates unleashed by these developments resulted in what a senior NBC executive has acknowledged is an approximately \$100 million-per-year increase in NBC's affiliate compensation costs, did NBC perceive an "urgent" need for Commission consideration of Fox's ownership.

Make no mistake: NBC's sense of crisis has absolutely nothing to do with the interpretation of Section 310(b)(4) or the divination of Congressional intent. It is the crisis of the *ancien régime* -- the collapse of the old-boys' club that has dominated network television from its inception. It is a last-ditch attempt to destroy the Commission's 40-year dream, and Fox's nearly 9-year-long effort, to end the hegemony of ABC, CBS and NBC and emerge as a viable national network competitor. It has become a crisis to NBC at this time only because of Fox's recent successes in the competitive marketplace.

**THE TRUE FACTS REGARDING FOX**

Presumably, from NBC's perspective, its "petition" already has served an important purpose by being released and widely circulated in the press even in advance of its filing at the FCC. Nevertheless, we must address and correct some of the "petition's" numerous false factual statements. For example:

NBC repeatedly asserts that Fox is a "foreign" or an "Australian" company. See, e.g., Petition at 4, 5, 6.

- The fact is, however, that both Fox and its immediate corporate parent, Twentieth Holdings Corp. ("THC"), are Delaware corporations. As the Commission is aware, 76 percent of THC's capital stock is owned and voted personally by K. Rupert Murdoch, a U.S. citizen. The remaining 24 percent of THC's capital stock is owned by a U.S. corporation which through several intermediate corporations is indirectly owned by The News Corporation Limited ("News Corp."), a South Australia corporation.
- News Corp. itself is a company with deep roots in the United States. Although News Corp. has its origins in Australia, at present in excess of 60 percent of its assets, revenues and operating income are attributable to its U.S. businesses. Furthermore, Mr. Murdoch, as a U.S. citizen, exercises *de facto* control of News Corp. and all of its businesses.

NBC asserts that Fox has benefitted from "special treatment" while "not particularly giving anything in return." Petition at 19. NBC is wrong on both counts. Fox does not enjoy "special treatment" and has contributed significantly to the public interest.

- In fact, it is NBC and the other older networks that have a history of "special treatment" from the FCC, beginning in 1954 with their successful campaign to impose a limit of only three VHF television channel allotments in most markets, thereby thwarting efforts to launch additional competitive

national networks. See Attachment B. Contrary to NBC's assertion, more than any other recent development in the broadcast marketplace, the emergence and growth of the Fox network, anchored by the Fox-owned stations, have contributed to the Commission's policy objectives of diversity and competition, at both the local and national levels.

- NBC seems to forget that nearly five years ago, when the established networks were still locked in the Houdini-like box of the Financial Interest and Syndication Rules, it was Fox that launched the successful effort to set them free. Fox could have sought a fin/syn waiver -- indeed, sitting members of the Commission urged it to do so -- but instead attacked head-on the continued application of the rules to *all* networks, even though doing so was adverse to its interests as a program producer and distributor. But for Fox, NBC would still be locked up.
- Fox is the only commercial network to provide 3 hours per week of *bona fide* educational programming for children. Fox has brought economic stability and growth to many historically underperforming UHF stations by providing those stations and their viewers with a new source of network-quality programming. The improved performance of many Fox affiliates in turn has enabled them to serve their communities with increased news and public affairs programming. Fox's success has also paved the way for the emergence of the fifth and sixth national broadcast networks.

NBC attempts to denigrate Fox by asserting that it is a network "without either a morning or evening news program." Petition at 13.

- The fact is, however, that Fox's owned-and-operated stations (which, after all, are the subject

of NBC's foreign ownership argument) broadcast locally-produced news programs utilizing materials fed by the Fox News Service. These programs provide a marketplace alternative to the network news programs on ABC, CBS and NBC.

- Based upon the latest ratings, the public places a high value on Fox's locally-edited alternative newscasts. For example, in New York, WNYW's morning news and information program, "Good Day New York," beat all three network morning news programs in the just-completed November sweep. In addition, WNYW's prime-time "Ten O'Clock News" beat both the CBS and NBC network evening newscasts. In Washington, D.C., WTTG's "Fox Morning News" beat CBS's "This Morning." The WTTG "Ten O'Clock News" generated a higher rating in the November book than did the NBC "Nightly News." In fact, WTTG was the number one-rated station sign-on to sign-off, up from the number four position only a year ago.
- Fox has succeeded in its news programming efforts without resorting to tactics employed by NBC at both the national and local levels, such as the staging of pickup truck explosions or the fabrication of sources regarding a sensitive criminal trial. See "NBC Fraud Shows Media Double Standard," Chicago Tribune, April 25, 1993; "Judge Refuses To Probe False News Leak in Simpson Trial," Los Angeles Times, October 15, 1994.
- In sum, contrary to NBC's gratuitous and misleading assertions, Fox is providing viewers with responsible, competitive alternative news and information programs in the finest tradition of American broadcasting.



### THE LEGALITY OF FOX'S OWNERSHIP STRUCTURE

Most outrageous of all is NBC's repeated assertion that Fox "is currently in violation of" the law because it is "more than 99%" owned by News Corp. Petition at 4, 16. The fact is, however, that Fox is operating pursuant to the Commission's grant of its applications to acquire the Metromedia television stations in 1985 (collectively, the "1985 Application" or the "Application"). See Metromedia Radio & Television, Inc., 102 F.C.C.2d 1334, 1336-37, 1352 (1985), recon. denied, 59 R.R.2d 1211 (1986), aff'd sub nom. Health and Medicine Policy Research Group v. FCC, 807 F.2d 1038 (D.C. Cir. 1986). That grant followed close Commission scrutiny of Fox's applications, which were subject to extensive opposition.

First, Fox prominently disclosed the funding source for its acquisition of the Metromedia television stations. The 1985 Application included an exhibit unambiguously entitled "Source of Funds," which stated in pertinent part:

To complete the proposed transaction, the assignee will be required to have available approximately \$600 million above the assumption of existing debt. *These funds will be provided through open credit lines in favor of [News Corp.] and its subsidiaries . . . .* Any funds obtained from other than U.S. financial institutions will be borrowed by certain foreign subsidiaries of [News Corp.] *and contributed as capital to the assignee.* Funds obtained through borrowings from U.S. financial institutions will be made by . . . a U.S. subsidiary of [News Corp.], *and contributed as capital or loaned to the assignee.* [1985 Application, Exh. 2 (attached hereto as Attachment C) (emphasis added).]

Fox also prominently disclosed its proposed capital stock structure. The 1985 Application stated that THC would issue two classes of stock, one common and one preferred. See 1985 Application, Exhibit 1, p. 1 (attached hereto as Attachment D). The Application explained that "[a]ll of the preferred stock will be owned by K. Rupert Murdoch," while all of the THC common stock would be owned by a U.S. corporation, control of which "is ultimately lodged in an Australian company, [News Corp.]." Id. at 2. (As Fox has explained previously, in 1986 Barry Diller, a U.S. citizen, purchased preferred stock with 25 percent of the voting power of THC. See Fox's Response to Supplement to Petition to Deny (Dec. 3, 1993) at 7 n.13. Mr. Murdoch purchased this stock from Mr. Diller in 1992, and presently owns all of the THC preferred stock.) The 1985 Application also disclosed that,

except for a fixed return allocated to the THC preferred shares (all of which were owned by Mr. Murdoch), "all other profits and losses of [THC] will be attributed to the common shares." *Id.* at 1. In other words, Fox clearly disclosed to the Commission in its 1985 Application that *all of the residual economic value of THC in excess of the preferred stock's fixed return would be allocated to the common stock indirectly owned by News Corp.*

After describing Fox's ownership structure -- including the fact that 24 percent of the capital stock (including *all* of the common stock) of THC was owned indirectly by News Corp., "a publicly traded Australian corporation" -- the Commission held that Fox was "*fully qualified and that a grant of [the 1985 Application] will serve the public interest, convenience and necessity.*" Metromedia Radio & Television, Inc., 102 F.C.C.2d at 1352 (emphasis added). This conclusion fully satisfied the mandate of Section 310(b)(4).

Two years later, at the beginning of the first television license renewal cycle following its acquisition of the Metromedia stations and before filing any renewal application, Fox requested and received the opinion of the prominent Washington, D.C. law firm that had represented Fox at the time of the acquisition and had assisted it in developing the Fox/THC structure. Fox sought specific assurances that it could certify Fox's foreign ownership compliance in its upcoming renewal applications. The letter provided to Fox stated that, "in view of the express language of Section 310(b)(4), the Commission's approval of the assignment of the licenses from Metromedia and Fox's previous disclosures to the Commission of its ownership structure, we believe that Fox can in good faith certify that it is in compliance with Section 310(b) in its renewal applications." There have been no changes in either the ownership structure or control of THC or News Corp. that would affect the continuing validity of that opinion or the Commission's grant of Fox's 1985 Application.

#### THE 25-PERCENT BENCHMARK

Aside from its blatant factual misstatements, the fundamental premise of NBC's "petition" is erroneous, for there is no "rule" to change. First, the provisions regarding foreign ownership of broadcast licensee holding companies are not embodied in the Commission's *rules*, but in Section 310(b)(4) of the Communications Act. (NBC erroneously contends that Section 310(b)(4)'s 25 percent benchmark applies to broadcast *licensees*. See Petition at 15. Foreign investment directly in broadcast licensees is governed by Section 310(b)(3).) Contrary to NBC's filing, the Commission has promulgated no rules or policies implementing this statutory provision.

Second, NBC fundamentally misstates and misinterprets the statute itself. There simply is no basis for NBC's characterization of the 25 percent benchmark in Section 310(b)(4) as a limit on foreign "equity" participation in a licensee holding company. See Petition at 7-9. Contrary to NBC's assertion, the statute by its terms refers to ownership of record or voting power over "capital stock," not paid-in dollars or equity. The Commission has held that, for purposes of Section 310(b)(4), non-voting stock and limited partnership interests constitute "capital stock." See Wilner & Scheiner, 103 F.C.C.2d 511 (1985) ("Wilner & Scheiner"), recon. granted in part, 1 FCC Rcd 1 (1986) ("Recon. Order"). But the Commission's decisions in Wilner & Scheiner specifically limited the consideration of equity ownership to *non-corporate entities* and made no reference to equity as a consideration when dealing with corporations where foreign stock ownership can be readily determined. This was precisely the case with Fox's 1985 Application, which the Commission granted without reference to its decision in Wilner & Scheiner. (The staff's unpublished January 11, 1985 letter in American Colonial Broadcasting Corp. relied on an analysis of voting common stock ownership in applying the Section 310(b)(4) benchmark. Only in dicta did the staff discuss an alternative calculation involving a denominator derived from share values.) See Metropolitan Council's November 19, 1993 Supplement to Petition to Deny at 6 n.1 (Commission has never held that "equity contribution" must be calculated in determining a corporate licensee's Section 310(b)(4) compliance).

Aside from its conclusory assertions, NBC has presented absolutely no basis for equating "capital stock" and "equity" for Section 310(b)(4) purposes. Furthermore, nothing in the legislative history of Section 310(b) suggests that Congress intended to require the consideration of equity interests when analyzing the ownership structure of corporate entities. Indeed, as NBC concedes (see Petition at 8), Congress' exclusive concern with stock ownership, as opposed to equity value, stems from its consistent and overriding purpose in enacting Section 310(b): to prevent undue foreign influence over domestic communications facilities and thereby to protect U.S. national security interests. (A detailed discussion of the legislative history of Section 310(b)(4) is set out in Attachment E.)

Consistent with the statute's sole concern with undue foreign influence, the Commission has approved transfers of broadcast licensees where a majority of the funding supplied by shareholders came from foreign investors. Univision Holdings, Inc., 7 FCC Rcd 6672 (1992), recon. denied, 8 FCC Rcd 3931 (1993). Of a total of \$100 million supplied by shareholders in connection with the acquisition of the Univision television stations, \$64.9 million of equity and debentures was provided by two powerful foreign broadcasters. In approving the transaction, the Commission reasoned that "[w]hile our need for careful review may

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increase as the percentage of foreign contribution increases, the ultimate question is not the source of funds. It is instead the control of a licensee's finances." *Id.* at 6676-77.

In view of the clear Congressional intent underlying the statute, NBC's arguments not surprisingly ignore the crucial fact that, as Fox previously has demonstrated, *both THC (and Fox) and News Corp. are without question under U.S. control as the result of K. Rupert Murdoch's personal ownership of 76 percent of the capital stock of THC and his personal de facto control of News Corp.* Contrary to NBC's misleading arguments and its recent presentations throughout Washington, this crucial element is not present in any other large international media company, including companies such as Sony and Matsushita. (We say this without malice to those companies, and only to respond to NBC's straw-man argument.) Furthermore, throughout Fox's nearly nine years of existence, there has been no claim that it has ever broadcast any material that was seditious or otherwise even potentially injurious to the national security or interests of the United States, or in any other way contrary to the intent of Section 310(b)(4).

NBC's logic if rigorously applied would lead to an absurd result. Clearly, if a U.S. citizen bought a share of General Electric common stock for \$100, and a foreign citizen later purchased a share for \$200 -- or even if these two stockholders made contemporaneous purchases but one bought at a discounted price -- each purchaser would hold an equivalent interest in General Electric, irrespective of the disparity in the amount of dollars paid for the shares due to market fluctuations. Yet, according to NBC's theory, the foreign shareholder would be deemed to have a greater interest in General Electric than the U.S. shareholder. Such a result clearly was not within the contemplation of the Congress and is completely contrary to corporate law principles and common sense. Furthermore, if Congress had been concerned with the amount of funds to be provided to U.S. licensees by foreign sources -- a result totally antithetical to the Congressional intent to protect against foreign control -- it also would have placed restrictions on the amount of foreign debt provided to licensees.

In this connection, it is interesting to note that, according to publicly available information, General Electric and its subsidiaries currently have borrowings in excess of \$90 billion (more than 15 times News Corp.'s total borrowings). It is difficult to believe that General Electric could accumulate borrowings of this magnitude without relying to a significant extent on non-U.S. financial sources and institutional investors. By way of contrast, substantially all of News Corp.'s borrowings are from U.S. banks and institutional investors.

As discussed above, Fox's 1985 Application unequivocally stated that News Corp. and related entities were the source of virtually all of Fox's equity funding. Fox explained that the roughly \$600 million needed to complete the acquisition of the Metromedia stations would be contributed as capital or loaned to THC and Fox by News Corp. or its subsidiaries from proceeds of loans by or from foreign and domestic banks. Yet, as Fox has demonstrated previously, neither the dollars paid in by News Corp. in 1985, nor the current dollar value of its 24 percent common stock interest in Fox (through THC), are material to the Commission's analysis of Fox's capital stock structure under Section 310(b)(4). Notwithstanding NBC's repeated attempt to blur the distinction between "equity" and the controlling statutory term, "capital stock" (see e.g., Petition at 16), the fact remains that, as disclosed in the 1985 Application and at all times since, News Corp. indirectly owns and votes only 24 percent of Fox's *capital stock*.

The mandate of Section 310(b)(4) is clear and narrow. Whatever the continuing validity of that provision in light of the increasing globalization of the competitive communications marketplace, Fox is not asking the Commission to "eradicate" the law (Petition at 4) or grant it special treatment. To the contrary, Fox is simply asking that its structure as set out in 1985 be confirmed to be in compliance with the plain language of the statute and the equally plain intent of Congress in enacting it.

#### THE COMMISSION'S DISCRETION UNDER SECTION 310(B)(4)

NBC also is incorrect in contending that "Section 310(b)(4) by its terms . . . requires the Commission to make a specific public interest determination before it grants a broadcast license to an entity whose foreign ownership exceeds 25%." *Id.* Section 310(b)(4) "by its terms" reads in pertinent part as follows:

No broadcast . . . station license shall be granted to or held by any . . . corporation directly or indirectly controlled by any other corporation . . . of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by *the refusal or revocation of such license*.  
(Emphasis added.)

Unlike Section 310(b)(3), which pertains to foreign ownership in the licensee entity itself, *Section 310(b)(4) does not establish any foreign ownership limit in a corporation that controls a licensee*. Rather, it gives the Commission

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discretion to limit foreign ownership above 25 percent -- if, and only if -- the Commission finds that the public interest would be served by doing so. The Commission has noted the distinction between "the flat statutory proscriptions contained in Section 310(b)(3)" and the discretionary standard applicable to Section 310(b)(4). Wilner & Scheiner, 103 F.C.C.2d at 524. The Commission also has recognized that it "has the statutory authority to evaluate whether or not, in a particular situation, it is in the public interest to permit a person to obtain or to hold a station license notwithstanding the fact that the alien interests in that station exceed the statutory benchmarks. *We will continue to make such public interest determinations on a case-by-case basis.*" Id. (Emphasis added.)

The caselaw cited by NBC is not to the contrary. Thus, for example, in Galesburg Broadcasting Co., 6 FCC Rcd 2210, 2211 (1991) (cited in NBC's "petition" at 15) the Commission issued an NAL where an unauthorized transfer of control had resulted in the acquisition of more than 57 percent of a licensee's voting stock by a foreign corporation. (NBC mistakenly describes the Galesburg case as an "MMB Letter." Petition at 15. In fact, the NAL letter was issued by direction of the Commission.) Even in this case where the foreign investment would indisputably confer control, the Commission explained that "[o]rdinarily, [it] would have an opportunity, in reviewing the transfer application which should have been filed . . . , to evaluate the propriety of an alien entity . . . taking control of U.S. broadcast stations. Under Section 310(b)(4)," the Commission continued, it "has discretion to deny such an application." (Emphasis added.)

NBC's "petition" in effect asks the Commission unlawfully to abdicate its "statutory authority" to evaluate the public interest of foreign ownership in excess of 25 percent. The relief sought by NBC, if granted, would effectively repeal Section 310(b)(4) by establishing "new rules that apply to everyone." Petition at 6. This, of course, the Commission is not permitted to do. To the extent General Electric seeks permission to solicit foreign investment in excess of 25 percent of its capital stock, it has two possible courses: it may submit a public interest showing to the Commission under Section 310(b)(4), or it may attempt to have new legislation enacted by Congress. It is NBC, not Fox, that seeks to change the law. It is NBC, not Fox, that seeks to "throw out the 60-year history" of the case-by-case determination mandated by Section 310(b)(4) by seeking a rule of general applicability regarding the consideration of foreign interests in excess of 25 percent.

Indeed, the Commission (in one of the cases cited by NBC) previously has rejected a request virtually identical to NBC's: that it adopt a generic policy regarding the treatment of interests in excess of the Section 310(b)(4) benchmarks. See Recon. Order, 1 FCC Rcd at 1, 2. "The current case-by-case procedure," the

Commission concluded, "assures that the Commission has the facts necessary for a meaningful public interest decision as to whether or not alien investment in excess of the ownership benchmark in Section 310(b)(4) comports with the public interest yet provides the agency with the flexibility to sanction alien investment above the statutory benchmark in situations where it is appropriate." *Id.* at 2.

NBC also is incorrect in its confident assertion that, "with absolute consistency and without exception," the Commission has "never" permitted "any" foreign ownership of a broadcast licensee holding company in excess of 25 percent. Petition at 1, 3, 7. But simply repeating this erroneous proposition doesn't make it true. In fact, a 1966 Commission decision permitted Banque de Paris to acquire and hold a more than 37 percent voting stock interest in Columbia Pictures Corp., which controlled the licensee of several broadcast stations. See Banque de Paris et des Pays Bas, 6 F.C.C.2d 418 (1966); Letter to Banque de Paris et des Pays Bas and United States Trust Company of New York from Ben F. Waple, dated October 21, 1966. The Commission authorized Banque de Paris, which directly held approximately 20 percent of Columbia's outstanding voting stock, to acquire an additional 17 percent through an independent voting trust established for the bank's benefit. The Commission's sole concern in approving a proposal to place shares in excess of 25 percent of Columbia's capital stock in trust was with the possibility that the bank could exercise control over the broadcast stations controlled by Columbia. Thus, although the trustee was required to vote the shares held in trust, the Commission approved the payment of all net dividend or other income or distributions to the bank. Consistent with the Congressional intent behind Section 310(b)(4), the Commission did not look behind the bank's capital stock ownership, nor did it impose any restrictions on the bank's holdings other than with respect to "any action looking toward an assertion of control" over Columbia.

#### GENERAL ELECTRIC'S HISTORY OF MISCONDUCT

NBC believes it is "ironic," in view of News Corp.'s Australian origins, that Australia's 15-percent foreign ownership limitation is "one of the most restrictive" in the world. Petition at 11-12. But even more ironic is that, because K. Rupert Murdoch is a U.S. citizen and because he controls News Corp., under Australian law News Corp. is deemed a U.S.-controlled foreign company. As a result, neither it nor Mr. Murdoch is eligible to hold more than a 15-percent interest in a broadcast licensee in Australia. Furthermore, Mr. Murdoch and certain members of his family have become citizens of the United States, and Mr. Murdoch has maintained his primary residence in this country for more than 20 years. He therefore should be treated accordingly by the government of this country -- *i.e.*, as

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a U.S. citizen with the same rights and responsibilities enjoyed by those citizens who are born here.

Indeed, notwithstanding NBC's parochial statements regarding the importance of preserving "a particular set of national traditions" by limiting ownership of broadcast stations to entities "rooted in and committed to those traditions" (Petition at 13), NBC and its parent company, General Electric, do not act consistent with their rhetoric, but take a decidedly more global view. General Electric's 1993 Annual Report and 1993 Form 10-K reported that NBC acquired control of Super Channel, the largest Pan European satellite-delivered program service, and launched Canal de Noticias, a 24-hour Spanish-language channel delivered by satellite to Latin America. In the most recent General Electric Annual Report, Robert Wright, Chairman and Chief Executive Officer of NBC in referring to these developments states: "This international strategy and other factors . . . help position NBC not only for enhanced success in our core business but also for full participation in *the new worldwide age of television*." (Emphasis added.) NBC's success in this regard is further reflected in recent announcements that it intends to provide television programming in Asia.

And, to be sure, NBC's stated concerns for the purity of American broadcasting are nothing more than a poorly veiled attempt to put another face on its anticompetitive objective to achieve at the FCC what it could not accomplish in the marketplace. Such conduct should not be surprising, coming from a General Electric-controlled entity. In addition to committing violations of federal and state environmental laws, General Electric has engaged in a pattern of illegal activity, including criminal fraud, antitrust and anti-competitive conduct that rises to the level of character violations calling into question NBC's basic qualifications to continue as a licensee of broadcast stations. See Policy Regarding Character Qualifications in Broadcast Licensing, 102 F.C.C.2d 1179 (1986), modified, 5 FCC Rcd 3252 (1990), aff'd in relevant part, 7 FCC Rcd 6564 (1992) (all felony convictions and guilty pleas, and judgments relating to fraudulent representations to a governmental unit, are relevant to FCC's determination of applicant's character qualifications). For example:

- In July 1992, General Electric pleaded guilty to four federal felony criminal fraud counts under the Foreign Corrupt Practices Act. General Electric was charged with defrauding the United States government of \$26.5 million intended to pay for the purchase by Israel of military aircraft engines. General Electric paid a \$9.5 million fine in connection with the criminal charges.



- In February 1994, the United States Department of Justice indicted General Electric in connection with an alleged criminal conspiracy with the DeBeers Consolidated Mines, Ltd. diamond cartel to fix prices in the \$800 million world market for industrial diamonds.
- Several federal investigations, including inquiries by the FBI, the Justice Department, the Department of Defense and the Federal Aviation Administration, have been conducted pertaining to accusations that General Electric managers compromised the safety of military and commercial aircraft worldwide by ignoring warnings that it was not properly grounding jet engines to protect against electrical interference, jeopardizing safety and violating General Electric's contract with the government.
- Earlier this year, a study by the Project on Government Oversight found that General Electric had been involved in more cases of fraud with the Department of Defense since 1990 than any other military contractor. Although General Electric was the fifth-largest military contractor during this period, it had been subject to 16 criminal convictions and civil judgments.

Consistent with this pattern of misconduct by its corporate parent, NBC itself has not gone out of its way to paint for the Commission a complete picture of the extensive combined equity and debt holdings of its sister company, General Electric Credit Corporation, in various media companies licensed by the FCC.

#### CONCLUSION

This letter, then, is an urgent plea for action. Resolution of Fox's and Metropolitan Council's long-pending request should not be further delayed by last week's inappropriate, anticompetitive filing by NBC or for any other reason. The WGBS(TV) assignment application was filed on August 18, 1993. Metropolitan Council's "Supplement" was filed on November 19, 1993. In view of the resulting inquiry, Fox deferred filing any new applications until September 30, 1994 -- nearly 7 months after dismissal of the WGBS(TV) application and long after the pleading cycle in the ownership inquiry had been completed -- even though to do so seriously hampered its ability to compete in the marketplace.

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Meanwhile, notwithstanding the passage of time, several rounds of responsive pleadings and Fox's detailed responses to multiple requests from the FCC staff for additional information, the Commission's knowledge of the material facts remains complete and unchanged -- precisely because the material facts as disclosed in the 1985 Application were complete and are unchanged. The governing statute also is unchanged, and there is no basis for any change in the Commission's application of the statute. *The only change has been Fox's effective challenge to the three established networks in the marketplace.* This is precisely why NBC has surfaced with its disingenuous "petition" only now, more than a year after the FCC began its highly-publicized inquiry into Fox's ownership structure.

Fox most assuredly is not asking the Commission to "change the law" -- either by making broad changes in the Commission's rules or by changing the applicability of those rules to Fox. Rather, and simply, Fox is asking the Commission to exercise its responsibility under its mandate from Congress in confirming that the ownership structure it approved in 1985 and that has not materially changed since that time was, and remains, lawful under Section 310(b)(4). The Commission should proceed accordingly without further delay and without regard to NBC's self-serving "petition."

Respectfully submitted,



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Mace J. Rosenstein

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cc: Commissioner James H. Quello  
Commissioner Andrew C. Barrett  
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## **ATTACHMENT A**

- **NBC Attacks Fox in the Media.**

*June 8, 1994:* NBC widely circulates a "Memorandum" alleging that Fox's investment in New World Communications is the culmination and result of a history of "special treatment" from the FCC.

- **NBC Attempts to Obstruct Station Acquisitions by Entities Controlled by Savoy Pictures Entertainment, Inc. (SF Broadcasting).**

*September 23, 1994:* NBC files a petition at the FCC to block SF Broadcasting's proposed acquisition of WLUK-TV, Green Bay, Wisconsin -- currently an NBC affiliate -- on grounds that it is impermissibly controlled by Fox, a passive minority investor.

*October 19, 1994:* NBC files a letter at the FCC urging that it refuse even to accept for filing SF Broadcasting's revised application for consent to acquire WLUK-TV.

*October 24, 1994:* NBC files another letter reiterating its request that the FCC refuse to accept the WLUK-TV assignment application.

*November 3, 1994:* NBC continues its series of FCC filings seeking to block acceptance of the WLUK-TV application.

- **NBC Attempts to Prevent Fox's Acquisition of WTXF-TV, Philadelphia, Pennsylvania.**

*November 18, 1994:* NBC files a petition asking the FCC to deny Fox's application for consent to acquire WTXF on grounds that grant would "prejudice" the FCC's consideration of NBC's allegations regarding SF Broadcasting.

- **NBC Attempts to Prevent Fox's Acquisition of WFXT-TV, Boston, Massachusetts.**

*November 21, 1994:* NBC files an identical petition seeking to block Fox's application for consent to acquire WFXT.

- **NBC Launches an Attack on Fox's Ownership Structure at the FCC.**

*November 30, 1994:* NBC files a "Petition for Rulemaking" asking the FCC to defer action on all Fox applications while conducting a "rulemaking" proceeding to modify the case-by-case application of Section 310(b)(4) of the Act as mandated by Congress.

## **ATTACHMENT B**

### **Broadcast Networks & Regulatory "Waivers"**

#### **FOX**

Fox has worked to build a fourth network against numerous marketplace, legal, regulatory and copyright structures that either explicitly or implicitly favor (or at least assume) a three-network world. Nonetheless, as of November 1994, Fox has only one waiver from FCC rules, allowing it to publish the *New York Post* while also operating WNYW-TV in New York.

Although the FCC briefly waived the application of the fin-syn rules to Fox during the pendency of its proceeding to re-examine the rules, Fox ultimately did not receive, and does not have a waiver from the fin-syn rules. The FCC established a "15-hours-of-prime-time-programming" bright line test for the applicability of these rules. All networks are free to move above or below this line with identical regulatory consequences. In addition, because of Fox's advocacy, this rule will soon be repealed for all networks.

Fox does not have a waiver from PTAR. It is triggered by the same 15-hour bright line test. Moreover, by airing an hour of local news at 10:00 pm, most Fox O&Os already comply with the rule, even though not required to do so.

Fox has requested a waiver of the television duopoly rule to permit it to acquire WTXF, a UHF station in Philadelphia, while continuing to own WNYW-TV in New York despite slight overlap between the signals of the two stations.

Fox is fully subject to numerous FCC network rules relating to a wide range of operating requirements and prohibitions.

#### **ABC, CBS, NBC**

**By contrast, the three older networks all enjoy numerous waivers of various FCC rules.**

#### **ABC**

For example, ABC enjoys several permanent waivers of the one-to-a-market rule. These waivers allow ABC to maintain lucrative AM-FM-TV combinations, previously forbidden altogether and even now allowed only upon special showings, in four of the five largest ADI markets -- New York, Los Angeles, Chicago and San Francisco. Capital Cities was permitted to retain these

**"grandfathered" combinations following its acquisition of ABC, even though the rule prohibited the intact sale of such combinations to a single party.**

**ABC also enjoys a waiver of the Commission's television "duopoly" rule -- which prohibits the common ownership of television stations with overlapping Grade B contours -- allowing it to own VHF stations in both New York and Philadelphia.**

**Before it acquired ABC, Capital Cities had received a waiver of the Commission's former "top-50" policy when it acquired several television stations from Triangle Publications, Inc. in 1971.**

### **CBS**

**For its part, CBS currently enjoys permanent one-to-a-market waivers in New York, Los Angeles, Chicago, Philadelphia and Minneapolis. In addition, CBS has applied for an additional permanent waiver of the rule in connection with its proposed acquisition of WGPR-TV, Detroit, where it already owns an AM and an FM radio station. CBS also owns a grandfathered New York/Philadelphia VHF television station combination prohibited by the television duopoly rule.**

**In connection with its acquisition of Midwest Communications, Inc. in 1991, CBS was granted a temporary (18-month) waiver of the national multiple ownership rule to permit the orderly divestiture of radio stations in excess of the 12 stations then permitted by the rule.**

### **NBC**

**Upon its acquisition of RCA in 1986, General Electric was granted temporary (18-month) waivers of the one-to-a-market rule in order to permit the orderly split-up of RCA's grandfathered AM-FM-TV combinations in New York, Chicago and Washington, DC.**

**\* \* \* \* \***

**As compared to the three older networks, Fox has not received excessive waivers or "special treatment."**

ATTACHMENT C

EXHIBIT 2  
Sec. 2, Q. 3(b)

Source of Funds

To complete the proposed transaction, the assignee will be required to have available approximately \$600 million above the assumption of existing debt. These funds will be provided through open credit lines in favor of The News Corporation Limited ("News Corporation") and its subsidiaries now available with American, European, and Australian banks. Any funds obtained from other than U.S. financial institutions will be borrowed by certain foreign subsidiaries of News Corporation and contributed as capital to the assignee. Funds obtained through borrowings from U.S. financial institutions will be made by News Group Publications, Inc., a U.S. subsidiary of News Corporation, and contributed as capital or loaned to the assignee.

Any borrowings of News Corporation to fund this transaction from either domestic or foreign sources will, as indicated above, be on open lines of credit available to News Corporation. There will be no pledge of any of the stock or assets of News Corporation, its subsidiaries, and, in particular, Twentieth Holdings Corporation or News America Television Incorporated. Further, the provisions of such open lines of credit will not allow the lenders to exercise any influence or control over the day-to-day operations of News Corporation, Twentieth Holdings Corporation, or News America Television Incorporated.

EXHIBIT 2

Any funds loaned Twentieth Holdings Corporation and/or News America Television Incorporated by News Corporation or any of its other subsidiaries through an intra-company loan agreement will be structured so that no operational control or authority over the television broadcast licensee will be permitted by non-U.S. citizens or entities at any time or upon default of any intra-company loan. All operational responsibilities for control of the television broadcast operations will reside solely with U.S. officers and directors of News America Television Incorporated.

ATTACHMENT D

EXHIBIT 1  
Sec. II, Q. 3(b)

The applicant herein, News America Television Incorporated ("NATI"), is a domestic corporation organized under the laws of the State of Delaware. With the exception of K. Rupert Murdoch, now an Australian citizen living in New York City, who has applied to the Immigration and Naturalization Service to become a United States citizen, all of its officers and directors are United States citizens. It is expected that, in the normal course, Mr. Murdoch will become a United States citizen within the next several months and, in any event, prior to the closing of the assignment of the licenses.

All of the stock of NATI is owned by Twentieth Holdings Corporation ("THC"), a domestic corporation organized under the laws of the State of Delaware. All of the officers and directors of THC are United States citizens, except for Mr. Murdoch.

THC will issue two classes of stock, one common and one preferred. The preferred stock will exercise 76% of the vote on all matters; and the remaining 24% of the vote will be exercised by the common stock. The holders of the preferred shares will be entitled to a fixed return on capital investment. All other profits and losses of the Corporation will be attributed to the common shares.

All of the preferred stock will be owned by K. Rupert Murdoch. All of the common stock will be owned by News Group Publications, Inc. News Group Publication, Inc. is a domestic corporation organized under the laws of the State of Delaware. Effective July 1, 1985, all officers and directors of News Group Publications, Inc., with the exception of K. Rupert Murdoch, will be American citizens.



The Articles of Incorporation and/or By-Laws of THC will contain appropriate provisions to require that: (a) none of its voting capital stock may be owned by other than U.S. citizens or entities formed under the federal or state laws of the U.S.; and (b) to the extent such voting capital stock is held by an entity, all of the officers and directors or partners thereof will be U.S. citizens. The Articles of Incorporation and/or By-Laws will further provide that the foregoing provisions may not be amended or modified without consent of the Federal Communications Commission. Subject to the foregoing limitations, the preferred shares of THC will be redeemable by the Corporation at any time upon vote of shareholders other than those holding preferred shares.

News Group Publications, Inc. is a wholly-owned subsidiary of News America Holdings Incorporated, a domestic corporation organized under the laws of the State of Delaware. The control of News America Holdings Incorporated, as reflected in the chart of corporate ownership attached to Exhibit 4, is ultimately lodged in an Australian company, The News Corporation Limited (hereinafter "News Corporation").

Forty-six percent of the stock of News Corporation is held by Cruden Investments Pty. Ltd. (hereinafter "Cruden"). Cruden is a private investment company whose sole assets are shares of News Corporation. The shareholders of Cruden are individual members of Mr. Murdoch's family and various trusts established for the benefit of Mr. Murdoch and members of his family. At the time of transfer of